



**SELF-DETERMINATION (319s)**

**VOLUME II**

**Karen Knop**

**Spring Term 1993**

**This case book is for the use of students at the Faculty of Law, University of Toronto and is not for commercial sale.**

1054  
RC  
1993  
11.1

45-747-611

BORA LASKIN LAW LIBRARY

FEB 26 1993

FACULTY OF LAW  
UNIVERSITY OF TORONTO

**SELF-DETERMINATION (319s)**

**VOLUME II**

**Karen Knop**

**Spring Term 1993**

**This case book is for the use of students at the Faculty of Law, University of Toronto and is not for commercial sale.**

## TABLE OF CONTENTS

VI	INSIDE MOVES: MINORITY RIGHTS, INTERNAL SELF-DETERMINATION AND THE RIGHT OF DEMOCRATIC GOVERNANCE	
A	<u>MINORITY RIGHTS: THE FAILED INTER-WAR SOLUTION</u>	
	Polish Minorities Treaty in P. Thornberry, <u>International Law and the Rights of Minorities</u> (Oxford: Clarendon Press, 1991) Appendix I.....	1
	P. Thornberry, <u>International Law and the Rights of Minorities</u> c.3.....	4
	H. Arendt, <u>The Origins of Totalitarianism</u> (N.Y.: Harcourt Brace Jovanovich, 1979) 269-275.....	12
B	<u>INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS</u>	
	Arts. 1, 25, 27, International Covenant on Civil and Political Rights.....	16
	Selected articles, Optional Protocol to the International Covenant on Civil and Political Rights.....	17
	Comment on art. 1 by Human Rights Committee.....	19
C	<u>INDIGENOUS RIGHTS: THE NEW CHALLENGE</u>	
	M.E. Turpel, "Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition" (1992) 25 Cornell Int'l L.J. 579 at 579-597 (edited).....	21
	Parts I-II, VII-IX, ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries in International Labour Organisation, <u>International Labour Conventions and Recommendations, 1919-1991</u> (Geneva: International Labour Organisation, 1992) 1436.....	31
	L. Swepston, "A New Step in the International Law on Indigenous and Tribal Peoples: ILO Convention No. 169 of 1989" (1990) 15 Oklahoma City U. L. Rev. 677.....	36
	UN draft declaration on the rights of	

indigenous peoples (first reading) in UN Doc. E/CN.4/Sub.2/1992/33 (20 August 1992).....	56
Statement of the Observer Government of Canada, UN Working Group on Indigenous Populations, 10th Session (Geneva, 21 July 1992) 4-6.....	65
Statement by Mr. Colin Milner on Behalf of the Australian Delegation, UN Working Group on Indigenous Populations, 10th Session (Geneva, 20-31 July 1992).....	67
L.A. Rehof, "Effective means of planning for and implementing autonomy, including negotiated constitutional arrangements and involving both territorial and personal autonomy" in UN Doc. E/CN.4/1992/42/Add.1 at 93-101.....	70

D     INTERNAL SELF-DETERMINATION: THE CONCEPTUAL PANACEA

1     THEORY

A. Cassese, "The Self-Determination of Peoples" in L. Henkin, ed., <u>The International Bill of Rights: The Covenant on Civil and Political Rights</u> (N.Y.: Columbia University Press, 1981) 92 at 92-102, 106-111.....	79
---	----

T.M. Franck, "The Emerging Right to Democratic Governance" (1992) 86 AJIL 46 at 46-53, 55-61, 63-64, 77-79, 87-91.....	93
--	----

N.B. This article has been edited considerably so as to  
focus on self-determination.

2     PRACTICE

a     External Self-Determination

<u>Frontier Dispute (Burkina Faso/Republic of Mali)</u> [1986] I.C.J. 554 at 564-567.....	105
---	-----

<u>Frontier Dispute</u> 653 (Separate opinion of Judge Luchaire).....	107
--	-----

<u>Frontier Dispute</u> 661-662 (Separate opinion of Judge Abi-Saab).....	108
--	-----

F. Wooldridge, "Uti possidetis doctrine" in R. Bernhardt, ed., <u>Encyclopedia of Public</u>	
---	--



	<u>International Law</u> , Instalment 1, vol. 10, 519.....	109
	Conference on Yugoslavia Arbitration Commission, Opinion No. 3 (1991) 31 ILM 1499.....	112
b	<u>Internal Self-Determination</u>	
	Conference on Yugoslavia Arbitration Commission, Opinion No. 2 (1991) 31 ILM 1497.....	114
E	<u>MINORITIES REVISITED</u>	
	UN draft declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities (second reading) in UN Doc. E/CN.4/1992/48 (16 December 1991).....	116
<b>VII</b>	<b>SELF-DETERMINATION AND RECOGNITION OF STATES</b>	
A	<u>RECOGNITION OF STATES GENERALLY</u>	
	I. Brownlie, "Recognition in Theory and Practice" (1982) 53 Brit. Y.B. Int'l L. 197 (edited).....	120
B	<u>WHEN SELF-DETERMINATION SPEEDS RECOGNITION</u>	
	J. Crawford, <u>The Creation of States in International Law</u> (Oxford: Clarendon Press, 1979) 255-266.....	127
C	<u>WHEN DENIAL OF SELF-DETERMINATION IMPEDES RECOGNITION</u>	
1	SELF-DETERMINATION OF THE WHOLE POPULATION	
a	<u>Rhodesia</u>	
	J. Crawford, <u>The Creation of States in International Law</u> 103-106.....	133
	Art. 53, Vienna Convention on the Law of Treaties.....	135
	D.W. Greig, Book Review (J. Dugard, <u>Recognition and the United Nations</u> ) (1992) 12 Australian Y.B. Int'l L. 296 at 298-302.....	136

b	<u>Yugoslavia</u>	
	EC Declaration on Yugoslavia (Extraordinary EPC Meeting, Brussels, 16 Dec. 1991) (1992) 31 ILM 1485.....	139
	EC Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union" (1992) 31 ILM 1486.....	140
	Conference on Yugoslavia Arbitration Commission, Opinion No. 4 (1991) 31 ILM 1501.....	142
	J. Newhouse, "Dodging the Problem" <u>The New Yorker</u> (24 August 1992) 60.....	145
	T. Mastnak, "Is the nation-state really obsolete?" <u>Times Literary Supplement</u> (7 August 1992) 11.....	155
	"Greece Eases Stance on Macedonian Name" <u>N.Y. Times</u> (15 February 1993) A5, col.5.....	157
2	SELF-DETERMINATION OF A SUB-GROUP OF THE ENTIRE POPULATION	
	See Conference on Yugoslavia Arbitration Commission Opinion No. 2, <u>supra</u> VI.D.2.b.	
<b>VIII PALESTINE AND ISRAEL (guest lecture)</b>		
	The McMahon Letter.....	158
	The Balfour Declaration.....	160
	The Churchill White Paper - 1922.....	161
	The British Mandate.....	165
	The White Paper of 1939.....	171
	Summary of the Report of U.N.S.C.O.P. (U.N. Special Committee on Palestine).....	182
	U.N. G. A. Res. on the Future Government of Palestine (November 29, 1947).....	186
	State of Israel Proclamation of Independence.....	194
	The Law of Return.....	196

	National Covenant of the Palestine Liberation Organization.....	197
	"Zionism is Racism", G.A. Res. 3379, 30 U.N. GAOR Supp. (No. 34), U.N. Doc. A/10034 (1975).....	200
	The Alexandria Protocol.....	201
	Treaty of Peace between the Arab Republic of Egypt and the State of Israel (1979) 18 ILM 362.....	211
<b>IX</b>	<b>SELF-DETERMINATION AND THE USE OF FORCE</b>	
<b>A</b>	<u>THE USE OF FORCE GENERALLY</u>	
	Arts. 2(4), 51, Charter of the United Nations.....	216
	O. Schachter, "The Right of States to Use Armed Force" (1984) 82 Mich. L. Rev. 1620 at 1624-1646.....	217
<b>B</b>	<u>EXTERNAL SELF-DETERMINATION AND THE USE OF FORCE</u>	
	Para. 5, principle of equal rights and self-determination of peoples, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (G.S. Res. 2625).....	229
	"Definition of Aggression" Resolution (G.A. Res. 3314).....	229
	A. Rigo-Sureda, <u>The Evolution of the Right of Self-Determination: A study of United Nations Practice</u> (Leiden: A.W. Sijthoff, 1973) c.5.....	233
	G. Abi-Saab, "Wars of National Liberation and the Laws of War" in R. Falk et al., eds., <u>International Law: A Contemporary Perspective</u> (Boulder: Westview Press, 1985) 410.....	247
<b>C</b>	<u>INTERNAL SELF-DETERMINATION AND THE USE OF FORCE</u>	
	W.M. Reisman, "Coercion and Self-Determination: Construing Charter Article 2(4)" (1984) 78 AJIL 642.....	261
	O. Schachter, "The Legality of Pro-Democratic	



	Invasion" (1984) 78 AJIL 645.....	264
D	<u>THE KURDISH PEOPLE: WHAT KIND OF A PRECEDENT DID S.C. RESOLUTION 688 SET?</u>	
	P. Malanczuk, "The Kurdish Crisis and Allied Intervention in the Aftermath of the Gulf War" (1991) 2 Eur. J. Int'l L. 114 at 114-123, 124-125.....	267
	S.C. Res. 688 (5 April 1991) 30 ILM 858.....	273
	Memorandum of Understanding (18 April 1991) 30 ILM 860.....	275
X	<b>EUROPE</b>	
	Principles III, IV, VIII, CSCE Final Act (Helsinki Accords).....	278
	Panel Discussion "Human Rights: The Helsinki Process" 1990 ASIL Proceedings 113 at 119-121 (Mala Tabory), 122-124 (John J. Maresca).....	279
	C. Whitney, "Scots March to Instruct Europe on a Concept: Independence" <u>N.Y. Times</u> (13 December 1992) 12, col.3.....	283
	M. Evans, "Belgium passes power to its regions" <u>Globe &amp; Mail</u> (11 February 1993) A11, col.3.....	284
XI	<b>QUEBEC</b>	
A	<u>WHAT "SELF"?</u>	
	Assemblée nationale, <u>Projet de rapport</u> , Commission d'étude des questions afférentes à l'accession du Québec à la souveraineté (16 September 1992) 10.....	285
	Ovide Mercredi, testimony, Assemblée nationale, Journal des débats, Commission d'étude des questions afférentes à l'accession du Québec à la souveraineté, No. 27 (11 February 1992) 815-816.....	286
B	<u>WHAT RIGHT?</u>	

<u>Report of the Commission on the Political and Constitutional Future of Québec [Bélanger-Campeau Report]</u> (March 1991) 52.....	287
S.A. Williams, <u>International Legal Effects of Secession by Quebec</u> , Background Studies of the York Constitutional Reform Project, Study No. 3 (N. York: Centre for Public Law and Public Policy, 1992) 18-22.....	288
D.A. Turp, "Quebec's Democratic Right to Self-Determination: A Critical and Legal Reflection" in S.H. Hartt et al., <u>Tangled Web: Legal Aspects of Deconfederation</u> , The Canada Round: A Series on the Economics of the Breakup of Confederation No. 15 (Toronto: C.D. Howe Institute, 1992) 99 at 107-122.....	291
J. Claydon & J.D. Whyte, "Legal Aspects of Quebec's Claim for Independence" in R. Simeon, ed., <u>Must Canada Fail?</u> (Montreal & London: McGill-Queen's University Press, 1977) 260 at 261-270.....	299

## C WHAT TERRITORY?

A. Buchanan, "Quebec secession and Native territorial rights" <u>The Network</u> (March 1992) 2.....	305
D. Cliche, "The sovereignty and territorial integrity of Quebec" <u>The Network</u> (May 1992) 10.....	308
M. Coon Come, "The Crees, self-determination, secession and the territorial integrity of Quebec" <u>The Network</u> (May 1992) 11.....	309
A. Buchanan, "A reply to Grand Chief Matthew Coon Come and Mr. David Cliche" <u>The Network</u> (May 1992) 13.....	311